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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 24 1997

In the Matter of

Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

To: The Commission

REPLY COMMENTS OF EMPIRE BROADCASTING, L.L.C.

Empire Broadcasting, L.L.C. ("Empire") licensee of low power television station W17BM, by its attorneys, hereby submits these Reply Comments in the Commission's Sixth Further Notice of Proposed Rule Making ("Sixth FNPRM"), FCC 96-317, released August 14, 1996, 61 Fed. Reg. 43209 (August 21, 1996), in the above-captioned proceeding.

In the Sixth FNPRM, the Commission announced its proposal to allot a second television channel for each full power television station in the nation for use in transmitting digital television ("DTV"). The Commission intends to accomplish this allocation by concentrating DTV channels into a band between Channels 7 and 51 with a view toward eliminating television station use of channels 2-6 and 52-69. Among those commenting on the Sixth FNPRM, were numerous broadcasters ("Broadcasters Caucus") who filed joint comments outlining a modified plan designed to improve upon the

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Commission's proposal.¹

Empire is concerned that neither the Commission's proposal nor the plan advanced by the Broadcasters Caucus adequately addresses the potential displacement of low power television stations, such as W17BM, and the resulting loss of unique programming such stations provide. As Empire mentioned in its Comments filed in this proceeding, W17BM is the only predominately Korean language low power station that produces significant amounts of local news and new magazine programming. If W17BM is forced to discontinue service the New York community would lose a valuable and unique local programming service that would not likely be replaced.

Clearly, the Commission's proposal to allot Channel 17 to Garden City, New York for DTV use by television station WLIW would, if adopted, conflict with and cause irreparable harm to W17BM's existing use of Channel 17 at New York City. By the same token, while less onerous, the proposal of the Broadcasters Caucus to assign Channel 17 to WLIG in Riverhead, New York could pose similar problems depending on the severity of interference and the number of viewers affected. In addition, Empire objects to the added plan supported by the Broadcasters Caucus to allot Channels 16 and 18 to WNJN, Montclair, New Jersey and WNJB, Brunswick, New Jersey,

¹ The broadcasters' comments were filed in response to the Sixth FNPRM and the Commission's invitation that interested parties submit alternative channel plans for allotting and assigning advanced DTV channels. See Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, dated November 22, 1996.

respectively. As shown in the attached Engineering Statement, operation of those DTV stations would result in significant interference to and from W17BM.² At a minimum, W17BM would be subject to displacement to another channel and could be forced to discontinue operation entirely.

While the Commission has acknowledged the benefits that low power television stations and TV translators provide to the public, it has neglected to devise a comprehensive plan to help mitigate the severe impact its DTV allotment and spectrum recovery proposals will have on these licensees. Currently, low power television stations that are displaced, are permitted to submit an application for a change in output channel, without being subject to competing applications. See 47 CFR 73.3572. The Commission has proposed to continue this procedure along with other measures that it has set out in the Sixth FNPRM.³ However, these measures do not rise to the level of a carefully planned procedure that ensures the survival of low power and translator stations. The sheer number of licensees that would be displaced upon implementation of the Commission's DTV proposal would not likely be accommodated by the measures that the

² See Engineering Statement of Kevin T. Ficher attached as Exhibit A (the "Engineering Statement").

³ For example, the Commission proposes that low power TV stations be permitted to operate on channels outside the core digital spectrum area; that low power stations be allowed to take terrain and other engineering factors into account when seeking replacement channels; and that low power station be permitted to continue operating until a new primary service provider or displacing DTV station becomes operational. See Sixth FNPRM at paras. 67-71.

Commission has suggested. Rather than attempting to resolve the low power/translator problem within the context of the DTV proceeding, finding the best solutions for the future of low power stations should be addressed in a separate rulemaking proceeding. In this way, Empire, and other interested parties could better develop alternatives to the proposals of the Commission and broadcasters and establish a priority for preserving low power service.

In the meantime, the Commission should not adopt its "core spectrum" proposal which inordinately impacts and would in many cases eliminate the services now being provided by low power television stations. It is incumbent upon the Commission to use its best efforts to preserve the diverse and unique programming now provided to the public by low power stations such as W17BM. To destroy these stations in favor of a second channel for full power broadcast stations is not an efficient use of the spectrum, nor fair or equitable to the low power industry.

Respectfully submitted,

EMPIRE BROADCASTING, L.L.C.

By:


Robert J. Rini

Rini, Coran & Lancellotta, P.C.
Dupont Circle Building
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

Its Attorneys

January 24, 1997

EXHIBIT A
SMITH AND FISHER

ENGINEERING STATEMENT

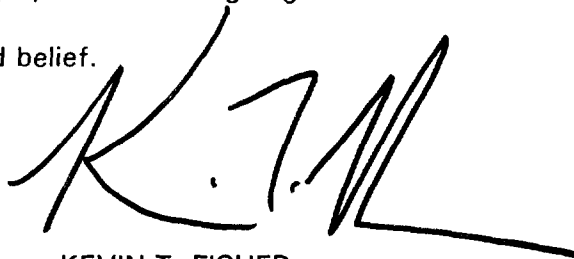
The engineering data contained herein have been prepared on behalf of EMPIRE BROADCASTING, L. L. C. ("Empire"), licensee of Low-Power Television Station W17BM, Channel 17, Manhattan, New York, in support of its Reply Comments to the FCC's *Sixth Further Notice of Proposed Rule Making*, FCC 96-317, released August 14, 1996, in MM Docket No. 87-268.

In comments filed in this proceeding, the Broadcasters Caucus ("Caucus") submitted a modified Table of DTV Allotments, which differed greatly from that proposed by the FCC. Specifically, the Caucus proposed utilizing the entire VHF and UHF bands for channel assignments, as opposed to the FCC's proposed "core spectrum" proposal, which attempts to squeeze DTV allotments between Channels 7 and 51. The Caucus claims, among other things, that its approach will have less of a deleterious impact on the operation of LPTV stations throughout the country.

Empire fully supports the Caucus' concept of utilizing Channels 2 through 69 in assigning DTV channels to full-power broadcasters. However, in the modified table, the Caucus assigned DTV Channel 17 to WLIG, Riverhead, New York; DTV Channel 16 to WNJN, Montclair, New Jersey; and DTV Channel 18 to WNJB, New Brunswick, New Jersey. Any or all of these DTV facilities are likely to receive interference from or cause serious interference to W17BM and threaten the viability of this important New York City programming provider.

While Empire endorses the general concepts behind the Caucus proposal, it cannot support the Caucus table of allotments. Empire encourages the Commission to adopt an allotment scheme that will protect the viewers of W17BM from the threat of a loss of programing due to the implementation of digital television. Empire respectfully requests the inclusion of W17BM in the selection process of DTV allotments to full-power stations in the New York City area, so that the interests of its viewers will also be accommodated.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'K. T. Fisher', with a long horizontal line extending from the end of the signature.

KEVIN T. FISHER

January 24, 1997